[*Justice of the Peace and Local Government Review*, February 7, 1959]

JUSTICE OF THE PEACE AND LOCAL GOVERNMENT REVIEW

VOL. CXXII.

JUSTICE OF THE PEACE AND LOCAL GOVERNMENT REVIEW

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NOTES OF THE WEEK

The New Year

In taking this opportunity of expressing to our readers our customary good wishes for the year to come, we are glad to be able to announce that, at least for the time being, we are able to keep the present subscription rate to its present level. In these days of ever-increasing costs, it is a matter for some pride to the publishers that they have been able to respond to the national need for stabilization of prices for the sixth consecutive year. This has been done without any diminution in the service offered by this journal to its subscribers, or without any relaxation of the constant aim on the part of the publishers to provide a journal second to none in its field.

In 1957, more Practical Points were answered, and more published, than in any other year since 1939; more editorial pages were published than in any other year since before the war—and new and other features have benefited also by the more generous amount of space available. In 1958, it will be the aim of the publishers for the "J.P." to reflect the tradition of 120 years and more of continuous weekly publication, while meeting the challenge of today. We are encouraged to believe that our past efforts have been neither unavailing nor unsuccessful—for from the many hundreds of letters we receive annually from subscribers—it would appear that the "J.P." is today regarded more as an institution than as a newspaper. To those whom it serves, therefore, as to those who serve it—the publishers wish A Happy New Year!

Committal to Assizes

A High Court Judge has again complained of cases being sent for trial at Assizes when they are triable at quarter sessions and are apparently quite suitable to be dealt with by quarter sessions. According to the Brighton *Evening Argus*, Paull, J., sitting at Lewes, protested against a case of assault occasioning actual bodily harm having been committed to the Sussex Assizes, adding that this was the third case before him which should have been committed to quarter sessions. The learned Judge referred to the Magistrates' Courts Act, and asked what there was that was grave or difficult about the case in question. It does not appear that any answer was given.

It is true that s. 11 of the Act allows committal to Assizes on one other ground besides the unusual gravity or difficulty of the case. This is where committal to quarter sessions would involve serious delay or inconvenience. Upon which ground the examining magistrates acted does not seem to have been stated, so far as the brief report goes.

At all events this is a reminder that magistrates need to be hesitant about sending cases to Assizes, which are often overburdened by civil as well as criminal work, when such cases are triable at quarter sessions.

Indecent Assault

The Lord Chief Justice has again pointed out the desirability of some amendment of the law in relation to indecent conduct with children. In *Williams* v. *Gibbs* (*The Times*, December 12) the Divisional Court upheld the decision of quarter sessions, which had quashed convictions of indecent assault upon children aged six, five and four respectively. Lord Goddard said the defendant had been guilty of conduct of which every right minded person would feel disgust. He pointed out, however, that there must be an assault, in the sense of some compulsion or hostile act as an element in the offence, an indecent assault being an assault accompanied by indecency. In this instance quarter sessions had found that there was no evidence of assault. Lord Goddard referred to the case of *Director of Public Prosecutions* v. *Rogers* [1953] 2 All E.R. 644; 117 J.P. 424, and said that the present case was the third in recent years of much the same nature, and the Court had pointed out how desirable it would be for an Act to make such conduct an offence; it could be made an offence quite easily.

It would be generally agreed, we think, that it ought to be a criminal offence for a man to behave indecently with or in the presence of young children, irrespective of any question of assault.

The Policeman on the Beat

It is frequently urged, in discussions about the prevention of crime, that nothing really takes the place of the policeman on the beat regularly and conscientiously doing his job. We are interested in this connexion to read that in New Zealand, "a further 220 men are to be recruited for the police force in the next 12 months. The decision to resume recruiting has been influenced by clear signs over recent months that adequate patrolling of beats by uniformed constables is paying dividends." A further comment is that it is apparent that young policemen, the product of new training methods, are getting results.

In the same publication it is announced Maoris are being recruited into the force in New Zealand. Five years ago there were only one or two Maori policemen in the whole of the country. In recent years nearly a score have joined. Ten of the new recruits are stationed in Auckland and are said by the Assistant-Commissioner to show great efficiency. The Maoris, coming in many cases from rural occupations, are found to adapt themselves to police life only with some difficulty, but they do succeed in making first class policemen. They are subject to the same conditions as other recruits and no attention is paid to their race when they are stationed after completion of their training.

Three Sentences Resulting From One Offence

An unusual set of facts resulted in the substitution in the Court of Criminal Appeal, in the case of *R.* v. *Bowers* (*The Times*, December 10), of a nominal sentence of imprisonment instead of a sentence of borstal training.

The appellant, a boy of 16, was conditionally discharged in November, 1956, on conviction of larceny. In February, 1957, he was convicted (apparently at quarter sessions) of indecent assault and put on probation. In August, he was convicted of taking and driving away a motor car and was fined and disqualified. He was then dealt with for breach of his conditional discharge and was sent to a detention centre. From the detention centre he was taken back to quarter sessions because of the offence committed during probation, and the sentence of borstal training was passed.

The Lord Chief Justice, delivering the judgment of the Court of Criminal Appeal, said the Court did not think that that could be allowed because it meant that the appellant was being sentenced three times for the same offence of taking and driving away a car.

It does not appear that anything was done that was in any way contrary to the Criminal Justice Act, 1948. The boy had committed a further offence during the period of conditional discharge and the period of probation. At the same time, it was the one further offence, in respect of which he received a sentence, that led to his being sentenced also in respect of the two earlier offences. This would certainly appear to him, and to many other people, as being sentenced three times for the same offence, and this is how the Court of Criminal Appeal regarded it.

Oral Evidence and Evidence by Affidavit

Another case illustrating the limitations of affidavit evidence, a matter to which we referred at 121 J.P.N. 801, is reported at 3 All E.R. 620. This was *Byatt* v. *Byatt*, which decided that the fact that the ground of appeal is fraud or conduct akin to duress, does not make it improper to proceed by motion of appeal in order to obtain the discharge of a separation order made by justices on the ground of the wife's adultery.

In the course of his judgment in the Divisional Court, Lord Merriman, P., referred to the fact that the wife had filed an affidavit but the husband had not done so. The Court gave leave to the husband to file an affidavit. The learned President went on: "If it is felt to be right, as it may very well be, that this matter should not stand simply on cross-affidavits, we have given leave for either side to give notice to cross-examine the other. That, as far as one can see, should enable us on oral evidence to decide the essential question . . . we do think that it is desirable that the question of Aye or No, has this husband put forward evidence which he knew to be false, should be dealt with by oral evidence rather than be dependent on conflicting affidavits. Later, the Court having heard both parties and their witnesses, allowed the appeal.

Police Forces in 1956–57

The annual return published by the Society of County Treasurers and the Institute of Municipal Treasurers and Accountants shows that at March 31, 1957, there were few police forces whose actual strengths fell seriously short of authorized establishments. We believe also that since that date recruiting has in general proceeded satisfactorily and, after allowing for wastage by resignations and deaths there has been a net gain in police strengths. This fact must give a limited satisfaction to chief constables and police authorities, particularly as crime is again showing a tendency to increase. We refer to incomplete satisfaction, being aware that some chiefs regard recruitment up to the limit of authorized establishment as only a first stage: they consider that increases in authorized establishments are required and will no doubt urge an advance to this second stage when the first has been reached.

In the present economic climate such requests will obviously require even more careful and detailed consideration than might have been given in easier times. Each policeman on the authorized strength cost an average of £1,157 in the cities and boroughs and £1,231 in the counties and joint forces in 1956–57 so sizeable increases in strength must prove expensive. We have previously noted the useful figures given in this return showing population per officer in each police authority: the figures for comparable authorities will obviously be of use and interest when revisions of establishments are under consideration.

The return particularizes the main headings of police expenditure in terms of costs per 1,000 population. This is a rough guide only because strengths of forces, even if authorized establishments in all cases were at scientifically determined levels (which they are not), would not vary directly with population. Nevertheless the figures are useful as showing certain basic points. For example the cost of buildings is higher in the counties because standing joint committees must build more police houses than is necessary in the cities and boroughs. Conversely the cost of rent allowances and grant for repayment of income tax is higher in the latter class of authorities, but on balance they are gainers because whereas the maximum rent allowance which a constable can receive is ordinarily £111 the annual cost of a police house, including loan charges and maintenance costs is much higher: at present rates of interest it will be at least twice as much.

Those forces with relatively high strengths in relation to population have to pay a greater contribution for common police services (wireless, training, forensic science laboratories and other minor items). For example, the cost per 1,000 population was £43 in Liverpool but only £17 in Warwick: in the first authority the population per officer on the authorized establishment was 383, in the latter 960.

THE FURTHER OFFENCE WHILST ON PROBATION

By J. S. ALLEN, M.A., *Barrister-at-Law*

One of the main terms of an order of probation, and the main term of an order of conditional discharge, is that the person subject to the order will not commit a further offence during the currency of the order. If such a person does commit a further offence, what is his position? Section 8 (1) is the section under which proceedings would be commenced:

" If it appears to a Judge or justice of the peace . . . that a person in whose case a probation order or an order for conditional discharge has been made has been convicted by a court in any part of Great Britain of an offence committed during the probation period or during the period of conditional discharge, and has been dealt with in respect of that offence, the Judge or justice may issue a summons . . Provided that a justice of the peace shall not issue such a summons except on information . . . "

The limitations imposed by the section appear to be that the proceedings must be commenced by laying an information, (usually this is laid by a police officer), in the case of proceedings in a magistrates' court. The information may not be laid until the probationer has been convicted and dealt with in respect of a further offence, which was committed during the term of the probation order. It is clear, therefore, that the procedure, whereby a summons under s. 8 is served upon a probationer the moment he pleads guilty to, or is convicted of, a further offence, is wrong. Such a summons should be dismissed as showing no valid cause for the commencement of criminal proceedings. In this event it is difficult to see how a " breach of probation," under s. 8, could be taken into consideration, when passing sentence for the further offence. This happened in the case of *R.* v. *Webb* [1953] 1 All E.R. 1156, which is now authority for the rule that a breach of probation should never be taken into consideration, when the further offence is being dealt with.

When the offender is brought to court upon the summons (or warrant), the Judge or magistrate proceeds under s. 8 (5):

" Where it is proved to the satisfaction of the court by which a probation order or an order for conditional discharge was made, or, if the order (being a probation order) was made by a court of summary jurisdiction, to the satisfaction of that court or the supervising court, that the person in whose case that order was made has been convicted and dealt with in respect of an offence committed during the probation period or during the period of conditional discharge, as the case may be, the court may deal with him, for the offence for which the order was made, in any manner in which the court could deal with him if he had just been convicted by or before that court of that offence . . . "

Once again, this subsection stipulates that the offender must have been convicted and dealt with for a further offence committed during the currency of the probation order. Secondly, the offender appears before the court specifically to answer for the original offence, in respect of which the probation order was made; the court having the power to deal with the offender in any manner open to it if the offence was being tried *de novo*. In this way s. 8 (5) differs from s. 6 (3), which deals with the breach of a probation order. Under the latter section the court may pursue any of three remedies:—

1. It may impose a fine not exceeding £10 in respect of the breach, without prejudice to the probation order.

2. It may order a period at an attendance centre, where this course is applicable, without prejudice to the probation order.

3. It may if the order was made by a magistrates' court deal with the probationer for the original offence, in the same manner as under s. 8 (5).

By s. 5 (4), if a person subject to an order of probation or conditional discharge is sentenced for the original offence, the order is thereby terminated.

By s. 6 (6) a probationer is not to be dealt with under s. 6 (3) for a breach of probation for the sole reason that he has committed a further offence. However, if the further offence is a manifestation of general bad conduct, so that the probationer has clearly broken the condition " to be of good behaviour and lead an industrious life," the probation officer would be acting correctly by bringing proceedings under s. 6 (3).

The power granted the court by s. 8 (5), whereby it can deal with the offender for the original offence in the same manner as that open to it if the offender was before the court upon conviction of that offence, gives the court power to order a fresh period of probation in respect of the original offence. In this manner, it is theoretically possible to order a fresh period of probation for three years in respect of the original offence, to replace a previous period of three years' probation imposed in respect of the original offence, which would have shortly expired had it not been for the commission of a further offence. In practice, however, there is much which could be said condemning such a procedure.

Although s. 8 appears straightforward, difficulty arises when s. 12 (1) of the same Act is considered:—

" Subject as hereinafter provided, a conviction of an offence for which an order is made under this part of this Act placing the offender on probation or discharging him absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made *and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act*."

The part of the subsection in italics has two separate yet comprehensible meanings. First it could mean that an original order of probation (or absolute or conditional discharge) is to be deemed a conviction for the proceedings in which the order is made and for any proceedings, which may later be taken against the person under ss. 6 or 8 of the Act in respect of a breach of that order. By this interpretation, the proof of the finding of guilt, which led to the order in question, is facilitated. No evidence to prove the offence, on a second occasion, is necessary. It is proved in the same manner as a conviction, which did not result in an order of probation or absolute or conditional discharge being made. Such difficulties as arose in *R.* v. *Harris* [1950] 2 All E.R. 816; 114 J.P. 535 would not occur. (In that case the prosecution sought to adduce evidence of a previous finding of guilt, upon which the offender was made subject to a conditional discharge, for the purposes of s. 4 of the Vagrancy Act, 1824 and the Firearms Act, 1937.) This interpretation is narrow in that it refers in all cases to the original order only. Consequently " subsequent proceedings " means subsequent to the original order yet in relation to that order. If this interpretation is correct, the following position arises: if a person, who is subject to an order of probation or conditional discharge, commits a further offence, and in respect of that further offence is placed on probation or made subject to an absolute or conditional discharge, he is deemed not to have been convicted of a further offence *vis-à-vis* proceedings under s. 8 in relation to the original order.

There is no authority for this being the correct interpretation of the section; the closest cases are *R.* v. *Heritage* [1951] 1 All E.R. 1013; 115 J.P. 331, and *R.* v. *Stobbart* [1951] 2 All E.R. 753; 115 J.P. 561. Both these cases deal with the effect of s. 12 (1) upon a conviction resulting in an order of probation, in relation to the requirements of s. 21 of the Act (Corrective Training). But as s. 21 is not one of the "foregoing provisions" of the Criminal Justice Act, 1948, the cases cannot be said to be strictly relevant and, therefore are not helpful.,

The second meaning of s. 12 (1) is wider. In this case, a finding of guilt, which results in an order of probation or absolute or conditional discharge being made, in respect of either the original offence or the further offence or both, is treated as a conviction in proceedings which are brought under s. 8. (Of course it is treated as a conviction in relation to its own proceedings, in any event.) This wider interpretation covers the case, where a person subject to a probation order, commits a further offence, for which he is placed on probation or made subject to an absolute or conditional discharge. If the order, made in respect of the further offence, is deemed a conviction, the natural consequence is that proceedings can be taken against the offender under s. 8. If this is so, it might be said that proceedings under s. 8 are subsequent to the further conviction, in respect of which the court made an order of probation or absolute or conditional discharge, and flow naturally from it. In this event, both the finding of guilt upon the original offence and the finding of guilt upon the further offence are deemed to be convictions for the purposes of proceedings under s. 8.

In support of this interpretation, it might be pointed out that subss. 1 and 5 of s. 8 use the words "convicted, and dealt with" in respect of the further offence. The phrase "convicted and sentenced" is not used, and this would appear to be a clear indication that the draftsman of the Act realized that a court might not wish to impose a fine or term of imprisonment upon conviction of the further offence. The argument is strengthened by the wording of s. 3 (1) of the same Act, where the following words are used: "Where a court . . . is of opinion that . . . it is expedient to do so, the court may instead of sentencing (the offender) make a probation order . . ."

Although both interpretations of s. 12 (1) may be adduced without stretching the meaning of any of the words of the section, it would appear more logical that when a person, who is warned at the time an order is made, that he should not commit a further offence during the currency of the order and that if he does so he will be brought back to court to answer for the original offence, he should not escape the consequences of his wilful disregard of the warning, merely because a court sees fit to deal with his further offence in a lenient manner.

IN PROPER ORDER

Last year at 121 J.P.N. 691, we printed some reflexions of our own, arising out of two articles by Mr. A. S. Wisdom, on the subject of duties involved in the ownership of land traversed by a watercourse. We are moved to return to the topic by a letter pointing out to us that one of Mr. Wisdom's conclusions, which we ourselves accepted in our article last year, differs from an editorial opinion we had expressed at 117 J.P.N. 107.

The point at issue is whether s. 35 (1) of the Land Drainage Act, 1930, imposes on the person having control of a watercourse a duty to keep it clear of natural weed growths or natural silt, with the conclusion that his not doing so is a default within the meaning of subs. (2) and subs. (5) (*b*) of the section, even though the weeds or silt cannot be attributed to any action by him, such as damming back the water, or any neglect such as failing to keep his cattle from breaking down the banks. Mr. Wisdom takes the view that a landowner who has not contributed to growths or accumulations in the watercourse by any act of his own, or by neglecting to control things for which he is responsible, but has merely let nature take its course, is not in default. In other words, the duty imposed by subs (1) is less extensive than it looks at first sight. He bases this opinion partly upon the reasoning of the Lord Chief Justice in *Neath R.D.C.* v. *Williams* [1950] 2 All E.R. 625; 114 J.P. 464. It is true that, as our other correspondent has reminded us, *Neath* v. *Williams* was not decided under the Land Drainage Act, 1930, which did not apply in the circumstances. The information was laid under s. 93 of the Public Health Act, 1936, as applied to watercourses by s. 259. Mr. Wisdom considers, however, that the language of the two Acts is so far the same that it is permissible to interpret the word "default" in the Act of 1930 in the light of the judgment under the Act of 1936.

Early in that judgment (p. 466 of our report) Lord Goddard said: "The decision in this case depends on the answer to the question whether a landowner on whose land there is a watercourse which becomes choked by natural causes—action of the water on land or on rocks or whatever it may be, or by weeds or by any other cause—can be said to be a person by whose act or default the nuisance arises or continues?" At p. 471 he completed his judgment by saying: "There was no act here which caused the obstruction either to arise or to continue . . . there is nothing to show that the respondents did anything which caused this obstruction to arise or continue, nor do I think that there is anything which can be properly called a default. There might have been facts which amounted to a sufferance."

If this extract can be treated as appropriate to proceedings under the Land Drainage Act, 1930, it seems that anyone served with a notice under s. 35 (2) of the Act of 1930 might successfully plead under s. 35 (5) (*b*) that the watercourse was choked by natural causes and that the condition of the watercourse was not due to any act or default on his part. (*See Coulson & Forbes on Waters*, 6th edn. p. 825, footnote (*p*).)

It is worth noticing also that at p. 467, Lord Goddard said: "It seems to me clear that the proviso to s. 259 is designed to prevent an additional duty being cast on the landowner. . . ."

We have already mentioned that at 117 J.P.N. 141, we did not ourselves take the view based upon Lord Goddard's judgment, and stated above. Upon looking again at the point (by reason of its being brought to our attention by another correspondent) we are inclined to prefer our own earlier view —with all respect to Mr. Wisdom's special knowledge of this topic.

First, s. 35 (1) of the Act of 1930 expressly relieves the person having control of the watercourse from the duty of putting right mischief caused by mining subsidence. Apart from this, the subsection makes it the duty of that person to keep the watercourse "in proper order," an unusual phrase which seems apt to require wider performance than a mere abstaining from interference.

Secondly, subss. (2) and (5) of s. 35 do certainly (as Mr. Wisdom says) limit the right of recourse by a drainage board

to going against a person in default, but the section does not contain an enactment equivalent to the proviso forming the last few lines of s. 259 (1) of the Act of 1936. It is arguable whether this enactment was intended by Parliament to let out the person who has left nature to take its course, or merely to underline the necessity of proving default, whatever this word means. Whatever the proviso does in its own framework, it does not (at all events) occur in the Land Drainage Act, 1930. Finally, s. 259 of the Act of 1936 was not new law. Its substance was older than the Land Drainage Act, 1930, and it is fair to suppose that in the special cases covered by s. 35 of the Act of 1930 Parliament intended to go further than in relation to watercourses generally.

Upon reconsideration, therefore, we do not feel convinced that a landowner can refrain from doing anything, where this produces the result that the watercourse is no longer " in proper order "—to use the statutory phrase.

Mr. Wisdom, who has been good enough to give us comments upon the other correspondent's letter above mentioned, admits that his interpretation of s. 35 would deprive it of much of its value. A land drainage authority would be doing a public service to the agricultural community, by taking this difficult point of law to the High Court.

THE LOCAL GOVERNMENT BILL: THOUGHTS ON THE FINANCIAL PROPOSALS

I The General Grants

Clause 1 of the Local Government Bill is the most important financial proposal affecting local authorities since the Local Government Act, 1948, created the exchequer equalization grant. Percentage grants in aid of the cost of education, health, fire, children, road safety, police motor patrol, registration, physical training, and welfare services, together with certain subventions under the Town and Country Planning Acts are to be abolished and replaced by a new system of general grants to county and county borough councils.

We gave particulars of the provisions of the Bill in our issues of November 30 and throughout December last: on this occasion we comment on certain of the proposals.

So far as the general principle is concerned we have previously expressed an opinion when reviewing the White Paper on Local Government Finance. Let it suffice here to say that the new experiment, if and when it comes into operation, will be watched with the greatest interest. This interest will be heightened because of past condemnations of block grants of the sort the Bill proposes to create. Not the least of these criticisms has been that one demonstrating the complete inability of such grants to differentiate between individual authorities. If any one authority gets under these proposals a grant related and attuned to its individual needs it can only be by accident.

It will be recalled that the White Paper suggested a general grant composed of three elements, namely, a basic share of £4 15*s*. 2*d*. per head of the total population plus 8*s*. for each child under 15 years of age plus supplementary shares where justified by certain calculations about numbers of school children under five, old persons over 65, density of population, declining population and supposed high costs in an area called Greater London. Part II of sch. 1 to the Bill repeats these factors in general description but, quite obviously, contains no figures. All such are to be " prescribed " and in fact, as the Bill is drafted, the Minister is left with vast initial freedom to suggest for the approval of Parliament any set of figures which he may favour. There is no guarantee comparable with s. 86 (3) (*c*) of the Local Government Act, 1929, which provided that the block grant created by that Act should not in any year fall below a guaranteed production of the rate and grant borne expenditure of that year. Indeed, it may well be said that the idea of such a guarantee is completely opposed to the Government view of the way in which the general grant should operate.

We cannot imagine for a moment that the Minister and the Departments are prepared at this stage to explain or define how they will interpret the White Paper assurances about increased grants during a period when unforeseen increases occur " of such magnitude that they cannot reasonably be carried in full by the local authorities." What is magnitude and what is reason ?

The peculiar provision about a special supplementary grant factor for the Greater London area remains together with the more sensible supplements. The Bill proposes that a payment shall be made if the area of the authority or a part of it lies within the Metropolitan police district: such supplement is to be a percentage of the basic grant (prescribed in the usual way) " having regard to the higher level of prices, costs and remuneration in and around the area." In a minor way this provision demonstrates very well the faults of the whole block grant conception: it is arbitrary and difficult, if not impossible to justify. The definition brings in the total areas of the administrative counties of Essex, Hertford, Kent, Middlesex and Surrey, as well as the area of the London county council and the county boroughs of Croydon, East Ham and West Ham. It leaves out, however, the whole of East Sussex, West Sussex, Brighton and Hastings. Folkestone and Frinton get relief but Worthing and Southend do not. What sort of a principle is this ? It will be interesting to hear the Minister or other unfortunate nominated for the purpose endeavouring to justify this provision.

At the present stage discussion must be confined to the broad principle. No figures of the effect of the suggestions on individual authorities have been published although we believe that they are available in Whitehall. The reason for keeping them out of Parliament can readily be surmized, but we are convinced that nothing which might assist in any way to a proper understanding of the import of the proposals should be withheld from those responsible for dealing with the Bill inside or outside of Parliament.

As *The Times* said on November 21, " The change to block financing makes sense only if it becomes the means of markedly reducing Exchequer aid, so obliging local authorities to raise more funds from their own resources . . ." We agree and, as we have said previously, sympathize with the Government position: we still feel, however, that the required alteration of burden between taxpayer and ratepayer could be made while retaining percentage grants by reviewing and altering where necessary the percentages given.

One thing seems clear. Because of all the uncertainties the grant, at least in its early stages, should be reviewed annually.

II The Rate Deficiency Grant

Although much more has been written and said since 1948 about the equalization grant (particularly by those who dislike it) than about specific grants, we must not allow the authors and the orators to blind us to the fact that, financially speaking, that grant is small beer by the side of the specific grants. The latest figures available for 1954–55 show the following position:

	£m.	*Percentage*
Specific grants	385	85
Equalization grant	66	15
	£451	£100

The Bill follows the proposals outlined in Annex D of the White Paper and thus contains several novel features. The name is changed to rate deficiency grant, grants will be paid direct to county district councils and metropolitan boroughs which qualify, the assessment will be made on the basis of rate products instead of rateable value, and only "normal expenditure" will rank for grant. Local authorities are to be divided into groups (counties, county boroughs and so on) and the last proposal simply means that, subject to a saving clause for authorities which spend above-average before the starting date of the new proposals, if the expenditure of any one authority exceeds the average for its group no rate deficiency grant will be paid on the excess. This is so whether the excess expenditure is due to wild extravagance or because of unalterable local circumstances. Those who know local government know how improbable is the first and how likely the second of these causes, but the grant will make no distinction at all. The unfortunate authorities concerned, through no fault of their own, will be forced either to cut services or to increase rates.

Thirty-five county borough councils oppose the grant from another angle, namely because they object to rateable value as the sole determinant of entitlement to a grant. These authorities are the successors of the band who earlier opposed the equalization grant on a number of grounds, including the fact that they received no share of it. Formerly they attacked the whole conception of rateable value as a test, leading us to write in earlier comments* that a logical extension of their ideas would result in the total replacement of the rating system by a weighted poll tax. Presently, however, the chief criticism is on the familiar line that the grant cannot operate successfully whilst there is partial derating of some properties, complete derating of others and 1939 valuations for dwellings. Their argument is not necessarily true: it assumes that every hereditament should pay rates in full on a current normal valuation. We too should like to see this position realized, but there are a very large number of people, maybe a majority of the population of these islands, who think otherwise. It is a possibility that 100 *per cent.* rating and the application of complete current valuations may never be achieved, but even if they are not there is no reason why a rate deficiency grant should not be paid by relation to current facts, as the equalization grant has been paid in the past, and still achieve a tolerable measure of justice.

III Local Autonomy

Increased independence for local authorities is linked with acceptance of the new system in many council chambers. The first careless rapture in which official spokesmen threw wide the gates to paradise has flamed and quickly died: now those gates have been firmly shut, not least in relation to the education service of which Sir Edward Boyle said as long ago as March last when Lord Hailsham was Minister of Education, "My noble friend does not intend to give up controls which are needed for the maintenance of standards or the carrying out of national policy." Evidently these are still to include financial control because cl. 3 of the Bill gives the Minister power to reduce grant where he or his colleagues are satisfied that "reasonable standards" have not been maintained on any service. The associations are keenly interested in the removal of controls: they have evolved an idea that the Government departments need only concern themselves with the achievement of minimum standards and otherwise leave local authorities free. But what are "minimum standards" and how, if at all, can they be devised and prescribed? We do not believe that the Government can afford to relax any controls of substance and we do believe that its reasons for maintaining them are sound. There are not only minimum standards but also priorities as between services. Some loosening of the bonds of administration may be achieved but these are relatively unimportant: we do not expect to see much of power transferred from the centre.

(*To be Continued*)

*The Non-Receivers (120 J.P.N. 181–182).

ADDITIONS TO COMMISSIONS

EASTBOURNE BOROUGH

Mrs. Ethel Mary Haddon Carter, West House, Granville Road, Eastbourne.

Hugh Hubbard Ford, Carlisle Place, Carlisle Road, Eastbourne.

GLOUCESTER CITY

Mrs. Jean Foyle, Winds Way, Wheatridge, Upton-St.-Leonards, Gloucester.

GREAT YARMOUTH BOROUGH

Mrs. Edna Marwood, 25 Barnard Avenue, Great Yarmouth.

Percy Nathaniel Nockolds, M.B.E., 35 Admiralty Road, Great Yarmouth.

GUILDFORD BOROUGH

Lord Hamilton of Dalzell, M.C., Snowdenham House, Bramley, Surrey.

Dr. John Angus Waycott, Twycross, Charterhouse, Godalming, Surrey.

HEREFORD CITY

Mrs. Edna Rose Dyche, 57 Kings Acre Road, Hereford.

Mrs. Margaret Lucy Elizabeth Wood, 277 Ledbury Road, Hereford.

POOLE BOROUGH

Miss Jeanne Mary Bisgood, Richmond Lodge, Lawrence Drive, Canford Cliffs, Poole.

Herbert Victor Slade Gould, 28 Lake Road, Hamworthy, Poole.

Robert Philip Oakley, Woodlands, Lakeside Road, Branksome Park, Poole.

Alfred William Edlen Parsons, 96 Uppleby Road, Parkstone, Poole.

Major-General John Christopher Temple Willis, C.B., C.B.E., 58 Pearce Avenue, Parkstone, Poole.

SUNDERLAND BOROUGH

Mrs. Agnes Hope Burn, 4 Roker Park Terrace, Sunderland.

Mrs. Edith Churchill, Parkside, Roker, Sunderland.

Albert Hector Grabham, Pyneholme, Ashbrooke, Sunderland.

John William Jamieson, 602 Hylton Road, Pennywell, Sunderland.

Leslie Pearson Milburn, 10 The Cedars, Sunderland.

Mrs. Mary Sybil Punshon, 10 Grange Crescent, Sunderland.

William Ord Stephenson, M.B.E., 75 Sorley Street, Sunderland.

Mrs. Margaret Jane Wrightson, 2 Aboyne Square, Farringdon, Sunderland.

WALLASEY BOROUGH

Robert Harvey Cozens, 109 Upton Road, Moreton, Wirral, Cheshire.

Ian Edward Fraser, V.C., 12 Lyndhurst Road, Wallasey.

Miss Dylis McCormick, 8 Sandrock Road, Wallasey.

LAWYER CLERK CONTROVERSY—A COMPROMISE

By ANOTHER DEPUTY TOWN CLERK

The articles on the question whether the clerk to an authority should be a solicitor in your issues of September 14 and October 19 have put two points of view, but have left many things unsaid.

The root of the problem in the first article was that the contributor who had wide experience with different authorities (and in the judgment of the present writer was at least in his late thirties) had achieved a salary of over £1,000 a year, and yet realized that he had no opportunity of obtaining a chief's appointment unless he undertook the difficult solicitor's examination, many of whose subjects of a practical nature could only be approached by him in theory. If he had this examination success he considered that his status in the profession would only be the equivalent to that of a newly qualified solicitor, and therefore he rejected the whole idea of qualifying. Your second contributor said that a man with a background in local government would have a good chance of success, and indeed it is true that local authorities do tend to calculate the years of service in local government rather than years of experience as a solicitor. The difficulty appears to be that the " guinea pig " in this experiment is already in receipt of a salary of more than £1,000 a year. It follows that he must be employed by a large authority. Many appointments with smaller authorities will be beneath the salary at which he is employed. In any case the clerk of a small authority which employs a solicitor would have no qualified staff to assist in the work, and it would follow that practical experience in the profession rather than in local government would be required. In the larger authorities the only complete administrator (albeit with a legal bias) is the clerk. The deputy clerk and senior assistant solicitors combine legal functions with any administrative duties which they perform, and a local government officer of long standing who has only just qualified would normally be at a disadvantage against those who have had years of practical experience. The difficulty is not merely the age but the present salary of the officer, which precludes him from applying for the less appointments but encourages him to apply for those which he is unlikely to achieve unless he has outstanding good fortune.

Whatever may have been the position in the past, it seems clear today that it is advantageous to a local authority to appoint a solicitor as its clerk. When salaries are on a scale based on population and irrespective of qualification, the local authority gain financially if the legal work is done within the office rather than sent outside. If the clerk is unqualified it is unfair to ask him to supervise the work of the assistant solicitor, and it is equally unfair to give that solicitor the whole responsibility for the legal work of the office. Where a non-solicitor is employed as clerk or deputy additional legal staff is usually required.

Administration is a loose term, and it is difficult to know who are good administrators. Within industry it is possible for chairmen of companies to transfer from nylons to aeroplanes without losing their grasp of affairs, because their administration is company control, in its relation to markets and outside bodies. They are experts in a specialized form of management. The Civil Service has an administrative grade, distinct from the professional, but these administrative positions are recruited from the universities and serve an apprenticeship in administration as such before accepting real responsibility. In local government there is very great scope for technical ability and little for major administration. Generally what administration there is has a technical bias. The engineer has to build his houses and carry out road works while the treasurer controls spending. It may perhaps be hazarded that a legal training is perhaps as good a technical training as possible to ensure fair administration.

This article may suggest little future for the unqualified man of £1,000 a year. The answer seems clearly this: that if he is not satisfied, and is as clearly confident and competent as he suggests, he will leave local government and prove himself outside. This will not be the failure of local government but merely the success of the individual.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Devlin and Pearson, JJ.)

R. *v.* IBRAHIM AND OTHERS

December 10, 1957

Magistrate—Summary trial or committal for trial—Election by defence for summary trial—Opening of case—Decision of magistrate to commit—No evidence heard—Magistrates' Courts Act, 1952 (15 *and* 16 *Geo.* 6 *and* 1 *Eliz.* 2, *c.* 55), *s.* 24.

APPEALS against conviction.

The appellants were convicted at the Central Criminal Court before the Common Serjeant of wounding with intent and were each sentenced to nine months' imprisonment. The appellants were originally charged at a metropolitan magistrate's court with unlawful wounding, which offence, although indictable, the magistrate might try summarily. The appellants elected that the case should be tried summarily. The magistrate proceeded with a view to a summary trial, but, after hearing the opening of the prosecution, he said that he would not try the case summarily and he committed the appellants for trial. The offence of wounding with intent was included in the indictment, as being an offence disclosed in the depositions within the meaning of s. 2 (2) of the Administration of Justice (Miscellaneous Provisions) Act, 1933. It was contended for the appellants that the committal for trial was invalid on the ground that the appellants had elected to be tried summarily when they were brought before the magistrate, and he had " begun to try " the case, and, therefore, under s. 24 of the Magistrates' Courts Act, 1952, he was bound to continue the trial.

Held: that the magistrate did not begin to try the case within the meaning of s. 24 until he began to hear the evidence, and that, as the magistrate in the present case had decided to commit for trial before he heard any evidence, the committal was valid. The appeals must, therefore, be dismissed.

Counsel: *J. O. Haines,* for the appellants; *J. B. R. Hazan,* for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal; A. W. Kemp,* Solicitor, Scotland Yard.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Donovan and Havers, JJ.)

ROYAL COLLEGE OF NURSING *v.* ST. MARYLEBONE BOROUGH COUNCIL

December 2, 13, 1957

Rating—Relief—Charitable object—Nursing—Advancement of profession—Rating and Valuation (*Miscellaneous Provisions*) *Act,* 1956 (4 *and* 5 *Eliz.* 2, *c.* 9), *s.* 8.

CASE STATED by the County of London quarter sessions.

The appellants, the St. Marylebone borough council, appealed from a decision of London quarter sessions that the Royal College of Nursing was entitled to the rating relief under s. 8 of the Rating Act, 1955, in respect of their premises at 1 Henrietta

Place, W., on the ground that their main objects were charitable. The college was incorporated by Royal Charter in 1928.

Quarter sessions found that the main objects of the college (as set out in the charter) were " (*a*) To promote the science and art of nursing and the better education and training of nurses and their efficiency in the profession of nursing. (*b*) To promote the advance of nursing as a profession in all or any of its branches." The objects in clause (*a*) were admitted to be charitable.

Held: that on its true construction para. (*b*) was directed to the advance of nursing and not to the advance of the professional interests of nurses, and, therefore, the second main object of the college was charity and the appeal must be dismissed.

Counsel: *Widgery*, for the appellants; *Rowe, Q.C.*, and *Blain*, for the respondent college.

Solicitors: *Sharpe, Pritchard & Co.; Charles Russell & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Devlin and Pearson, JJ.)

WERNICK *v.* GREEN

December 6, 1957

Animals—Poultry—Records—Poultry dealer—Person who " sells for slaughter poultry which he has purchased and fed " —Meaning of " fed "—Live Poultry (Movement Records) Order, 1954 (*S.I.* 1954, *No.* 122) *art.* 2 (1).

CASE STATED by the South Staffordshire (Wolverhampton) stipendiary magistrate.

An information was preferred at Wolverhampton magistrate's court by the respondent, Frederick Green, charging the appellant, Joseph David Wernick, a poultry dealer, with failing to keep the records required by art. 3 of the Live Poultry (Movement Records) Order, 1954. By. art. 2 (1) a " poultry dealer " is defined as " a person habitually engaged in the business of buying and re-selling poultry or day-old chicks " and it is also provided that " a person shall not be deemed to be a poultry dealer by reason only that he sells for slaughter poultry which he has purchased and fed for that purpose." The magistrate found that all the poultry purchased by the appellant was sold by him for slaughter; that a substantial portion of poultry was retained by the appellant on his premises for only one day before being re-sold for slaughter; and that the appellant gave food to poultry on his premises to keep them alive and avoid cruelty. He was of opinion that the word " fed " in art. 2 (1) should be construed as meaning " fattened "; that the appellant did not come within the exemption provided, and was, therefore, a "poultry dealer " within the meaning of art. 2 (1); and that, as he had failed to keep the required records, an offence had been committed. He, accordingly, convicted the appellant, who appealed.

Held: that " fed " should be construed in its ordinary sense, and not as necessarily meaning " fattened "; a bird was " fed " within the meaning of the article if it was given food to prevent it from getting thinner just as much as if it was given food to fatten it and increase its weight ; the appellant, accordingly, came within the exemption and was not a " poultry dealer " and the conviction must be quashed.

Counsel: *P. C. Northcote*, for the appellant ; *Wingate-Saul*, for the respondent.

Solicitors: *Sharpe, Pritchard & Co.*, for *Woolley & Co.*, Wolverhampton; *Solicitor, Ministry of Agriculture, Fisheries and Food.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

MINISTER CONFIRMS FIVE SMOKE CONTROL AREAS

Five orders for the creation of smoke control areas under the Clean Air Act, 1956, have been confirmed by Mr. Henry Brooke, Minister of Housing and Local Government.

They are orders made by Bolton, Denton (Lancs.), Hayes and Harlington (Middlesex), Ossett (Yorks.) and West Bromwich. They cover a total area of 380 acres and include 920 buildings.

The only other order which has been confirmed under the Clean Air Act dealt with the city centre of Liverpool. All the orders come into operation during 1958.

With the exception of the West Bromwich order, no objections to any of these orders were received.

ROAD CASUALTIES—OCTOBER, 1957

During last October, 537 people were killed on the roads of Great Britain compared with 424 in the same month last year. The number of persons seriously injured was 5,624, a decrease of eight ; and the number slightly injured 17,396, a decrease of 541, making a total for all casualties of 23,557. This was 436 less than in October, 1956.

There was a serious increase in the number of adult pedestrians killed. They numbered 203, an increase of 52. Of these victims 114 were 70 years of age or over, and police reports show that in 74 of the 114 cases the primary cause of the accident was that the pedestrian crossed the road apparently heedless of traffic. In five cases drivers or cyclists were blamed for failing to give way at pedestrian crossings.

More than half the fatalities among adult pedestrians occurred during hours of darkness, and of the victims 46 were aged between 70 and 80, 17 were 80 and over and one was over 90. The largest single cause of these accidents was stated to be crossing the road apparently heedless of traffic.

Casualties among motor-cyclists continued to increase compared with last year, but the increase was less marked than in previous months. Altogether 132 drivers and passengers were killed and 5,984 injured, making a total of 6,116 which is 454 more than a year ago.

Accidents to drivers of other vehicles resulted in 7,812 casualties, a decrease of 101. This total included 111 deaths, an increase of 32.

Casualties to pedal cyclists totalled 4,106, a decrease of 332. They included 59 deaths, an increase of five.

An encouraging feature of the figures was the continued improvement in child casualties. They totalled 3,363, a decrease of 760, or 18 *per cent.*, although the number killed, 45, was only down by one.

The Road Research Laboratory estimate that traffic on the main roads was about the same as in October last year.

In the first 10 months of the year, 4,350 people were killed on the roads, a decrease of 19. The total for all casualties is 224,828, which is 734 less than in the same period last year.

CUMBERLAND WEIGHTS AND MEASURES DEPARTMENT

A generally satisfactory state of affairs is shown in the report of Mr. A. Garratt, chief inspector to the Cumberland county council.

Of 16,763 weights tested, 242 failed to pass the prescribed tests. Of 6,106 weighing instruments, 345 failed to pass, of 33,674 measures, 92 failed to pass and of 658 measuring instruments, 71 failed to pass. Fair wear and tear was the cause of the errors in most of these instances. In connexion with the sale of food, 1,278 premises were visited and 30,219 articles of food were examined of which 727 were deficient, and 24 incorrect in other respects. Of 4,926 articles of pre-packed food only six were incorrectly marked.

Turning to the sale of coal and coke the report states that of 50 loads re-weighed only one was found incorrect, and of 1,576 sacks re-weighed 73 were found to be deficient in weight. One hundred and ninety-nine sacks were not labelled with the weight of coal/coke.

Under the heading of fertilizers and feeding stuffs an instance is recorded in which a sample of lucerne cubes was stated by the agricultural analyst to contain an amount of sand which could not be accounted for by natural causes. The farmer concerned said he would take up the question of excessive mineral matter with the firm of grass driers concerned.

Ample facilities for the verification of weights, measures and instruments have been provided. Verification fixtures were held at 66 places in addition to the four divisional offices.

COMMITTEE TO REVIEW PLANT AND MACHINERY

Mr. Henry Brooke, Minister of Housing and Local Government, has appointed a committee to prepare a new list of all the types of plant and machinery which are rateable. This information was given in an answer to a question in the House of Commons.

The chairman is Sir Edward H. Ritson, K.B.E., C.B., until recently deputy chairman of the Board of Inland Revenue. The committee is composed of experts in rating matters and includes a Queen's Counsel, a chartered surveyor, and members of the civil, electrical and mechanical, engineering institutions. The

members are Mr. Maurice Lyell, Q.C., Mr. T. S. Dulake, F.R.I.C.S., Mr. C. H. Pickworth, M.I.C.E., M.I.E.E., and Mr. A. B. Henderson, M.A., M.I.C.E., M.I.Mech.E.

The terms of reference of the committee are:

"To prepare in accordance with subs. (6) of s. 24 of the Rating and Valuation Act, 1925, a revised statement setting out in detail all the machinery and plant which appears to the committee to fall within any of the classes specified in sch. 3 to that Act.

"It will be open to the committee to review the interpretation of sch. 3 and the existing Plant and Machinery Order as it has developed in practice since the schedule was enacted, and to recommend any changes in the interpretation thereof for the purpose of preparing the revised statement.

"It will also be open to the committee to draw attention to any desirable amendments to sch. 3 to permit of greater clarity and precision in the drafting of the revised statement, always provided that such amendments do not involve a material change in the general concept of the rating of plant and machinery as now laid down in the schedule.

"In either case the committee should indicate what differences in the revised statement would result from any change of interpretation, or amendments to sch. 3, as the case may be."

Before 1925 practice varied widely over the rating of plant and machinery. The Rating and Valuation Act of 1925 sought to achieve uniformity by laying down in s. 24 that only those kinds of plant and machinery specified in sch. 3 to the Act were to be rated. Schedule 3 listed four classes:

(i) Items connected with: (*a*) the generation, storage, primary transformation, main transformation of power; or (*b*) heating, ventilation and lighting, etc.

(ii) Passenger lifts and elevators.

(iii) Railways and tramways.

(iv) Certain named items "in the nature of buildings or structure."

A committee was appointed under s. 24 to list in detail the items which appeared to fall within these classes, and the committee reported in 1926. The Minister confirmed the list, after modification, in the Plant and Machinery (Valuation for Rating) Order, 1927. (S.R. & O. 1927 No. 480.) The order is decisive in determining which kinds of plant and machinery are to be included in the assessment of factories, mines, etc., and which are to be ignored, and it has not been revised since. The advance of technology has resulted in the development of many new types of machinery, and the order has become more and more out of date. This had led to expensive litigation.

The committee is inviting evidence from professional institutions and representative industrial associations. Any other body or person wishing to offer their views to the committee should communicate in writing with the secretary of the committee, Mr. N. Hamilton, of the Ministry of Housing and Local Government.

NATIONAL HEALTH SERVICE TRIBUNAL

A report by the chairman, Sir Reginald Sharpe, Q.C., on the work of the National Health Service Tribunal during the three years ended July 4, 1957, shows that in six cases out of 15 they directed that the practitioner's name be removed from the Executive Council's list on the grounds that continued inclusion would be prejudicial to the efficiency of the National Health Service. Three doctors and three dentists were concerned. In five cases the respondent gave an undertaking not to practice under the Health Service but this did not of course in itself prevent his engaging in private practice. Proceedings before the tribunal are ordinarily instituted by a representation to the tribunal that the continued inclusion of a practitioner in any list of medical practitioners, dental practitioners, chemists or opticians, who have undertaken to provide the appropriate service under the National Health Service Act, 1946, would be prejudicial to the efficiency of the service in question. Proceedings may also be instituted by an application to the tribunal for permission to practice under the service by a person who is debarred from doing so, *i.e.*, an application by a practitioner whose name has been removed from the appropriate list that his name should be reinstated. Applications for reinstatement were made by a doctor, three dentists and three opticians, and one doctor applied for a variation of his undertaking. Two were granted, four were dismissed, one was withdrawn and one was not proceeded with. One dentist whose name the tribunal directed be removed from the list appealed unsuccessfully to the Minister.

POLIOMYELITIS VACCINE

The Ministry of Health has issued a circular to executive councils with a memorandum for the information of general medical practitioners on the policy which has now been adopted by the Government as to immunization against poliomyelitis. Vaccination will be offered before the summer of 1958 to all children under 15 and to expectant mothers. All children born in 1943 to 1956 inclusive and those born in 1957 who are over six months of age are therefore eligible. To carry out this programme it will be necessary to supplement the supply of British vaccine. In the light of a special investigation by doctors who visited Canada and the United States it has been decided that Salk vaccine, used in America, should be imported as a temporary measure to supplement British supplies. Parents will be at liberty to decline an offer of vaccination with Salk vaccine, though it is hoped that few will do so with the assurance that the vaccine has been fully tested in this country and the knowledge that the use of it is a means of giving early protection to children who might otherwise contract the disease. Arrangements have been in operation for some time for the vaccination of staff at hospitals where poliomyelitis cases are treated during the infectious stage. Later, members of the family of such staff will also be eligible.

TOO MANY DOCTORS?

The Minister of Health and the Secretary of State for Scotland appointed a committee under the chairmanship of Sir Henry Willink, Bart., M.C., Q.C., in February, 1955, to estimate the number of medical practitioners likely to be engaged in all branches of the profession in the future and the consequential intake of medical students required. It is suggested in the report recently published that from 1962 until about 1975 a reduced annual output from medical schools will suffice to meet all estimated needs and in consequence the intake of students into these schools should be reduced by about 10 *per cent.* as soon as practicable. By about 1975 an increased output of doctors is likely to be needed. In view of the letters which sometimes appear in the press about unemployed doctors it is satisfactory to learn from the report that the Committee thinks that the "hard core" of unemployed doctors is insignificant in number.

Although the Committee suggests it might be necessary for another review of the situation to be made in about 10 years' time, it expressed the view that the age distribution of existing doctors is such that the numbers of new doctors required to offset death and retirement are likely to rise about 1975. The number of active doctors in 1955 was about 53,260. Many elderly doctors are still practising but the Committee thinks it reasonable to

suppose that with the steady accruing of pension rights under the National Health Service Superannuation Scheme the proportions active at age 60 or more will show a gradual decline.

Recalling that in the years immediately following the establishment of the Health Service there was a large increase in the number of hospital consultants and senior hospital medical officers, the Committee says that it has had no evidence to lead it to think that expansion of the hospital specialist services is at an end. It has therefore reached the conclusion that for the period up to 1965 the number of specialists will continue to expand.

The total number of doctors whose predominant employment is by local authorities is about 2,500 and there is an estimated deficiency of about 125 whole-time doctors. The percentage wastage of students between 1945 and 1956 was approximately 5·58.

FINANCES OF THE WELSH CAPITAL

Cardiff has a population of 250,000 in an area of 18,000 acres. It is by a considerable margin the largest of all Welsh boroughs and is situated on the seaboard of the county of Glamorgan which itself includes within its geographical area almost half the total population of Wales.

City treasurer, Mr. R. L. Davies, F.I.M.T.A., has considerably condensed the annual financial statement of the city he serves and in our opinion has thereby improved it. Nothing of importance to those governing the city or interested in its governance, is omitted.

The rate for 1956–57 was 14*s.* 4*d.* and like most other rating authorities Cardiff carried forward large arrears of rates at the year end, pending settlement of appeals. The special position of Cardiff in another aspect of rating is emphasized by the information that allowances under s. 8 (2) of the Rating and Valuation (Miscellaneous) Provisions Act, 1955, in respect of property in the city occupied by charitable and similar organizations amounted to £53,000. £24,000 of this sum represented relief to the University of Wales and £19,000 relief to the National Museum of Wales. A penny rate produced £16,600.

Total expenditure on revenue account was £9,200,000: the net charges falling on public funds were financed as to £2,900,000 by rates and £2,700,000 by grants. Capital expenditure totalled £3,200,000 of which £900,000 was for housing and an equal amount of house mortgage advances. The shadow of the Empire Games to be held in Wales next year is seen in the expenditure of £220,000 on the Wales Empire Swimming Pool.

The corporation owned 16,500 houses at the year end: four years previously the total was 13,300. Then rents totalled £465,000, while in 1956/57 the tenants paid £1,031,000. No subsidy was given from the rate fund in aid of housing expenditure and a surplus of £330,000 was carried forward on the housing revenue account at the year end. £191,000 of this sum represented arrears of rents due under the differential rents scheme which was superseded by a rent rebate scheme on July 1, 1957.

Both the transport and water undertakings earned surpluses. Revised charges were brought into operation for both undertakings during the year.

Net loan debt at March 31 was £28¼ million, and the average rate of interest charged to borrowing accounts during the year was 3·6 *per cent.* Cardiff has been fortunate in securing a good response from local investors: £1,030,000 was subscribed during the year at 5½ *per cent.* for periods of two to seven years.

As is to be expected of a capital city ceremonial and entertainment expenses are relatively heavy. The lord mayor and secretariat, the lord mayor's car, the upkeep of the Mansion House and the expenses of civic receptions, totalled £22,500.

THE NATIONAL TRUST

The National Trust was founded 62 years ago to ensure the permanent safety and preservation of fine open country or fine buildings. The annual report for 1956–57 shows that it is impossible to count the millions who annually profit by the Trust's open spaces. But to properties where an entrance fee is charged there were 893,000 visitors last year which is an increase of 200,000 on the previous year. Public appreciation of the work of the Trust has been reflected in an increase of 5,500 in the membership. At the end of the year they totalled 61,713 but a further increase is essential for the Trust is badly hit by inflation.

The report gives a list of properties which were acquired during the year either from private donors or by transfers to the Trust by the Treasury after being accepted in payment of death duties. Sometimes grants for maintenance have been made by local authorities such as for a house in Devon where assistance was given by the Plympton rural district council. Sometimes a building owned by the Trust can be used for a public purpose such as Washington Old Hall, Durham, which was bought and restored by the Washington Old Hall Preservation Committee, mainly with funds raised in America. The Hall is to be used as a community centre and is let to the Washington urban district council. Besides historic buildings a large number of new open spaces have been acquired among which are some on the Cornish coast and in the Lake district. On the general position it is pointed out in the report that 10 years ago many country houses were in serious danger but today the position is less gloomy. One reason for this is that the provisions of the Town and Country Planning Act have enabled a number of important houses to be saved from demolition and another is the possibility of obtaining grants from the Minister of Works on the recommendation of the Historic Buildings Council.

CHIROPODY

The Minister of Health has been urged many times in the House of Commons to bring chiropody treatment within the National Health Service, particularly for old people. Recommendations to this effect have also been made in numerous surveys and official reports as well as by individual medical officers of health and others. For instance the medical officer of health for Glamorgan in his recent annual report said it would be interesting to know the number of old persons who are house-bound because of simple but painful foot conditions which could be remedied or alleviated by the occasional attention of a chiropodist. He urged that chiropody for the aged should be high on the list of desirable extensions of the National Health Service. It should not be difficult to adduce evidence that in some directions expense is being put on the service—both local and hospital—because chiropody treatment is not available. In the meantime schemes are being operated in many areas by local old peoples' welfare committees, sometimes with grants from the National Corporation for the Care of Old People but it is impossible for these schemes to meet all the needs owing to the expense to voluntary funds of providing part of the cost. It is anomalous that in London the county council has been able to continue schemes which were started before 1948 in some parts of the county but has been refused permission by the Minister of Health to extend the schemes to the whole of the county. This matter was recently considered again by the County Councils' Association at the request of the Durham county council. It was decided to urge the Minister to approve proposals to amend schemes under s. 20 of the National Health Service Act, 1946, so as to enable local health authorities to provide a chiropody service under s. 28 of the Act. The view was expressed that chiropody, which has a preventive aspect, should be a service of local authorities under s. 28 and of regional hospital boards as part of the hospital service but not of executive councils.

The most recent reference to this subject in the House of Commons was in the debate on the report on the "Chronic Sick and Elderly" on November 29. Labour Members then suggested that the Government should give serious consideration to the fact that the health of the feet is essential to the nation and that a national scheme should be instituted to provide a chiropody service based upon medical need but limited in its scope. It is significant that even opposition members agreed that treatment, outside hospital, should be on prescribed charges so as to lessen the risk of abuse of the service and in consideration for public funds—those in receipt of National Assistance to be exempted from the charge. All the Minister felt able to say was that the difficulty at present about extending the chiropody service was one of money.

CANCER REGISTRATION

The supplement to the Registrar-General's Statistical Review for 1952 on cancer is concerned with the development and treatment of cancer at eight sites and is based on data obtained between 1945 and 1952 from the National Registration Scheme. This scheme, in which over half a million cases had been registered to the end of 1955, has been organized since 1947 by the General Register Office in collaboration with the Ministry of Health, and is based on the voluntary registration of cases by hospitals. Its primary objectives are to obtain information about the incidence of cancer according to the primary growth and about the survival of patients. The following aspects of the epidemology of the forms of cancer studied are discussed: (i) The changing liability to cancer with advancing age and the effect of age upon survival. No simple time relation between the duration of symptoms and the stage of the disease was found. (ii) The relation of age and the duration of symptoms to the stage which a growth has reached when the patient comes under observation at a hospital. (iii) The broad methods of treatment used. (iv) The prospects of survival in relation to the age of the patient, to the duration of symptoms and to the form of treatment given. A table is given showing the five-year survival rates for early cases.

MAGISTERIAL LAW IN PRACTICE

Liverpool Daily Post. October 4, 1957

WIFE'S PLEA FOR BAIL REJECTED

A woman sales assistant was remanded in custody until next Tuesday at South-Western Court, Balham, London, yesterday, charged with being concerned on or about September 13 with Albert William Small and others with having in their possession 123 £5 notes knowing them to have been forged.

She was Mrs. Francis Mary Morgan, aged 33, of Baskerville Court, Baskerville Road, Wandsworth, S.W.

Detective Chief Inspector F. Chadburn said that next Tuesday Morgan would appear with four others who were already charged. He objected to bail.

He said: "At 4.30 p.m. yesterday with Detective Sergeant Griffiths I saw Mrs. Morgan in Nicosia Road, Wandsworth, and said: 'Mrs. Morgan you know me to be a police officer. I am going to arrest you for being concerned with Albert Small and others already in custody, on or about September 13, 1957, with having in your possession certain forged banknotes without lawful excuse.'

Intervention by Magistrate

"I cautioned her and she replied: 'I do not know anything about the money. My Leslie never told me a thing.'

"Later at Wandsworth police station I charged her with this offence and she replied: 'I understand, but I haven't had anything in my possession.'"

Asked if she wanted to question the police officer's evidence, Morgan said: "I do not know why I have been charged with all these £5 notes in my possession because I have not . . ."

The rest of the sentence was interrupted by the intervention of the magistrate, Mr. H. W. Wightwick.

Morgan then said: "I would like bail because of my little girl."

Detective Chief Inspector Chadburn said the objection to bail was the serious nature of the offence, because of other charges that were to be preferred against Morgan and because there were other charges to be made and other possible arrests.

Bail was refused.

The chief inspector based his objections to bail on quite proper grounds.

Halsbury says, "In exercising their discretion with regard to bail the justices must consider the nature of the offence, the strength of the evidence, the character and behaviour of the accused, and the seriousness of the punishment which may be awarded if the accused is found guilty" (para. 678, vol. 10 (3rd edn.) p. 374).

In *R.* v. *Phillips* (1947) 111 J.P. 333, the Court of Criminal Appeal refused leave to appeal to a man who had been sentenced to four years' penal servitude for housebreaking, 10 similar offences being taken into consideration, nine of which had been committed while he was on bail, seven before and two after his committal for trial. In delivering the judgment of the Court Atkinson, J., said, "The Court feels very strongly that the applicant ought not to have been released on bail. In cases of felony bail is discretionary, and the matters which ought to be taken into consideration include the nature of the accusation, the nature of the evidence in support of the accusation, and the severity of the punishment which conviction will entail." He went on to make observations on the undesirability of bail being granted by magistrates on a charge, such as housebreaking, where there is a likelihood of the offence being repeated pending trial.

Previous convictions may be taken into consideration, in deciding whether or not to grant bail. (*R. v. Fletcher* (1949) 113 J.P. 365). In the course of the judgment in that case Humphreys, J., said, "Having been committed for trial by the justices, the applicant applied for bail, and the justices properly asked the police officer in charge of the case: 'Have you any objection to bail?' The answer of the officer was: 'Yes, we have, because this man has been repeatedly convicted before.' The justices were then told what the convictions were. That takes place daily in magistrates' courts, and this court has no power and no desire to prevent it from taking place. What is very desirable is that, if newspapers are reporting the case, they should not include in the report any mention of the previous convictions."

In *R.* v. *Armstrong* [1951] 2 All E.R. 219, Lynskey, J., in delivering the judgment of the court, said: "It is clear that it is the duty of the justices to inquire into the antecedents of a man who is applying to them for bail, and, if they find that he has a bad record—particularly a record which suggests that he is likely to commit similar offences while on bail—that is a matter which they must consider before granting bail."

On September 8, 1955, the Home Office issued a circular to justices' clerks drawing attention to observations made by the Lord Chief Justice (Lord Goddard) on the question of the grant of bail pending trial to persons with long criminal records, in the case of *R.* v. *Wharton* in the Court of Criminal Appeal on July 6, 1955. Similar observations were made by Lord Goddard in the case of *R.* v. *Gentry* [1955] 39 Cr. App. R. 195, in which case he said, "As this Court has pointed out over and over again, it is most dangerous to grant bail to a man with a long record of convictions, unless the magistrates think that there is a real doubt as to his guilt, because he is sure, if he is admitted to bail, to commit offences while he is on bail."

These cases on previous convictions were all on the question of bail on committal for trial. When justices are dealing with an application for bail in a case they are trying themselves, or in an indictable case before they have decided to commit for trial, we think they would wish to refrain, as far as possible, from inquiring into the defendant's record.

MAGISTERIAL MAXIMS, XXXII

It may, with Truth, be said that "He who sits in the Saddle can always Control the Horse," an Adage which, sound as it may be on Some Occasions, can be Equally Dangerous on others, depending, not Unnaturally, upon how it is Applied, as a Certain Magistrates' Clerk once found to his Cost.

Though, perhaps the saying was Unknown to his Conscious mind, his sub-consciousness applied it to himself, he being the Rider, and His Bench of Magistrates the Horse; whereby he sought to guide and Direct them NOM SOLUM on Points of Law SED ETIAM on Questions of Fact, and although this Particular Horse was sometimes minded to Throw its Rider, so Firm was his grip upon the reins that he remained Firmly in his Seat, efforts of a sporadic nature to dislodge him not succeeding at all.

Notwithstanding this occasional Shy, the Ride was usually a smooth one, for the jockey "Knew his Stuff," or believed that he did, very well, and such Happy State of Affairs might have continued until he had finally dismounted into Well Earned retirement, had it not chanced to Hap that a certain case, involving very mixed issues of Law and Fact, came before his Court. The matter, though Trivial of itself, was so Important in its implications that Both Sides had briefed Learned Counsel to appear, which in due course, they did.

Both were Gentlemen of High-standing, and of considerable Tolerance, and wishing to Avoid that Most Undesirable occurrence described by the Popular Press as a "Scene at Court," bore Patiently and for a Long Time with the Many and Varied interruptions of the Clerk at almost every stage of the Case. So bad, however, did it become, that after one Protest from the Bar, the Chairman was constrained to whisper to his Official that it would be Better if he refrained from Interfering quite so much, only to receive the reply that he was but doing his Duty and that he was Not Afraid of any Counsel, nor of what they might Say then, or Do thereafter.

As may be imagined, after a Somewhat Chaotic hearing and an Indifferent and Confused judgment, the losing Party in the Matter took it to a Higher Tribunal, where the conduct of the case was reviewed at Some Length, with every visible evidence of No Enthusiasm by the Judges on how the Lower Court had dealt with Counsel on both sides.

It is not Needful to dwell in Detail on the Sequel, but the Clerk to the Justices, though now Long-Passed from Labour to Refreshment, being withal an Honest Man, can never forget that he would have done well to have remembered that the Romans said "EGO ERO POST PRINCIPIA," which Latin scholars have translated as "Discretion is the better part . . . etc.," but which Many Court Officials, and Particularly Clerks, prefer to render even though inacurately as "A quiet obscurity is oftimes preferable to the doubtful posterity of a name in the Law Reports."

AESOP II.

NEW STATUTORY INSTRUMENTS

1. **NATIONAL INSURANCE.** The National Insurance (Increase of Benefit and Miscellaneous Provisions) Regulations, 1957.

These regulations, which were made in consequence of the National Insurance (No. 2) Act, 1957, increase the rates of benefit payable under certain regulations made under the National Insurance Act, 1946, in order to bring them into conformity with the higher rates of benefits payable directly under that Act by virtue of the Act of 1957. Provision is made in relation to the payment of additional benefit in the case of persons not residing in Great Britain. The remaining provisions are of a minor or consequential character.

Came into operation on December 7, 1957. No. 2077.

2. **DESIGNS.** The Registered Designs (Extension of Period of Emergency) Order, 1957. Made November 27, 1957. No. 2061.

3. **CIVIL AVIATION.** The Air Navigation (Eighth Amendment) Order, 1957.

This order amends the Air Navigation Order, 1954:

(a) by extending the provisions of art. 22 of that order, which relate to the number and description of the operating crew of aircraft, so as to apply also to the number and description of other persons having duties to perform in the aircraft, and

(b) by modifying the provisions of r. 71 of the Rules of the Air in sch. 2 to that order which relate to the lights to be shown by certain flying machines registered in the United Kingdom.

Came into operation December 4, 1957. No. 2050.

4. **SUPPLIES AND SERVICES.** The Supplies and Services (Continuance) Order, 1957. Came into operation December 9, 1957. No. 2056.

5. **EMERGENCY LAWS** (Continuance) Order, 1957. Made November 27, 1957. Came into operation November 27, 1957. No. 2057.

6. **PATENTS.** The Patents (Extension of Period of Emergency) Order, 1957. Made November 27, 1957. No. 2062.

7. **PURCHASE TAX.** The Purchase Tax (No. 2) Order, 1957.

This order brings into force a new list of drugs and medicines which are free of purchase tax. The list supersedes the existing list shown in the Purchase Tax (No. 1) Order, 1957.

The new list comprises all substances and preparations exempted under that order, but certain substances formerly classified by reference to their chemical names are now entered according to the name approved by the British Pharmacopoeia Commission.

Came into operation December 9, 1957. No. 2068.

8. **NATIONAL ASSISTANCE.** The National Assistance (Determination of Need) Amendment Regulations, 1957.

These regulations provide for increases in the weekly sums allowed for requirements, other than rent, for the purpose of determining the need of applicants for assistance under the National Assistance Act, 1948.

Comes into operation January 27, 1958. No. 2072.

9. **NATIONAL INSURANCE** (Industrial Injuries). The National Insurance (No. 2) Act, 1957 (Commencement) Order, 1957. Came into operation December 6, 1957. No. 2073 (C. 21).

10. **NATIONAL INSURANCE** (Industrial Injuries) (Increase of Benefits and Miscellaneous Provisions) Regulations, 1957.

These regulations, which are made in consequence of the passing of the National Insurance (No. 2) Act, 1957, increase the rates and amounts of certain benefits payable under regulations made under the National Insurance (Industrial Injuries) Act, 1946, in order to bring them into conformity with the higher rates and amounts of benefit payable directly under that Act by virtue of the Act of 1957 and contain supplementary and transitional provisions following upon the passing of the last mentioned Act.

Came into operation December 7, 1957. No. 2074.

11. **PENSIONS.** The Non-Contributory Old Age Pensions Amendment Regulations, 1957.

Since the coming into operation on April 25, 1955, of the Non-Contributory Old Age Pensions Amendment Regulations, 1955, a person entitled to a pension under the Old Age Pension Act, 1936, has had the weekly rate of his pension adjusted for a period during which he was undergoing free of charge medical or other treatment as an in-patient in a hospital or similar institution so that it should not exceed 7s. 6d. These regulations amend the principal regulations by increasing the maximum weekly rate of pension during such a period to 10s. The provision of the principal regulations that in certain circumstances adjustment shall not take place until the pensioner has undergone treatment for 56 continuous days is left unchanged.

Coming into operation January 27, 1958. No. 2075.

12. **NATIONAL INSURANCE** (Children's Allowances and Orphans' Pensions) (Transitional) Amendment Regulations, 1957.

These regulations amend the National Insurance (Children's Allowances and Orphans' Pensions) (Transitional) Regulations, 1952, by providing that the weekly rate for an orphan's pension, which has hitherto been 8s. in all cases where that pension has precluded the payment of family allowance, shall be increased to 10s. where the family allowance would be payable at that weekly rate.

Came into operation December 7, 1957. No. 2076.

13. **AGRICULTURE.** The Bacon and Pigs Boards (Dissolution) Order, 1957.

This order dissolves on December 4, 1957, the Bacon Development Board established under the Bacon Industry Act, 1938, the Pigs Marketing Board established under the Pigs Marketing Scheme, 1933, and the Bacon Marketing Board established under the Bacon Marketing Scheme, 1933.

By virtue of the order and the provisions of ss. 30 and 36 of the Agriculture Act, 1957, the Bacon Industry Acts, 1938 and 1939, the Pigs Marketing Scheme, 1933, the Bacon Marketing Scheme, 1933, and part II of, and sch. 1 to, the Defence (Agriculture and Fisheries) Regulations, 1939, cease to have effect on the same date.

Came into operation December 4, 1957. No. 2078.

14. **COUNTY COURTS.** The County Court Funds (Amendment) Rules, 1957.

These rules increase the rate of interest allowed on money standing in an investment account in the county court from 3½ per cent. to 3½ per cent. per annum.

Came into operation January 1, 1958. No. 2094 (L. 20).

15. **SUPPLIES AND SERVICES.** Factories. The Sunday Baking and Sausage Making (Christmas and New Year) Order, 1957.

This order enables women to be employed in factories in the manufacture of bread or flour confectionery (including meat and fruit pies but not biscuits) or sausages on Sunday, December 22, 1957, in Great Britain and also on Sunday, December 29, 1957, in Scotland.

Came into operation December 22, 1957. No. 2140.

16. **WAGES COUNCILS.** The Wages Regulation (Toy Manufacturing) Order, 1957.

This order, which has effect from December 16, 1957, sets out the statutory minimum remuneration payable in substitution for that fixed by the Toy Manufacturing Wages Council (Great Britain) Wages Regulation Order, 1955 (Order Y. (53)) as amended by the Toy Manufacturing Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1956 (Order Y. (55)), which orders are revoked

Came into operation December 16, 1957. No. 2109.

BILLS IN PROGRESS

1. **Entertainments Duty Bill.** An Act to consolidate the enactments relating to entertainments duty. [H.L.]

2. **British Nationality Bill.** An Act to amend the British Nationality Act, 1948, by making provision in relation to the Federation of Rhodesia and Nyasaland and to Ghana, by extending the provisions for registering persons as citizens of the United Kingdom and Colonies, by extending and providing for the discharge of the functions in Commonwealth countries of High Commissioners for Her Majesty's Government in the United Kingdom, and for purposes connected therewith. [H.L.]

3. **Double Death Duties Bill.** A Bill to reduce death duties in cases where two or more persons perish as a result of a common calamity. [Private Members' Bill.]

4. **Variation of Trusts Bill.** [Now amended by Standing Committee C.]

5. **Import Duties Bill** [Now amended in Committee.]

NOTICES

THE SOLICITORS' ARTICLED CLERKS' SOCIETY

Activities for January, 1958

Tuesday, 7: Skating Party. Meet Brian Wilson on the ice at the Queen's Club Ice Rink (near Queensway Tube Station) at 7 *p.m.* No previous skating experience is necessary.

Tuesday, 14: Scottish Reels. At the Law Society's Hall, starting at 6.30 *p.m.*, with refreshments available throughout the evening. Sheila Amos will be assisting Patrick Wright in demonstrating for beginners.

Tuesday, 21: Wolfenden Report—Debate. At the Law Society's Hall at 6.30 *p.m.* Refreshments available from 6 *p.m.* The motion to be debated is that "This House deplores the two main recommendations in the Wolfenden Report." There will be four prepared speakers giving their considered views followed by any speakers from the floor. A prize of £1 1*s.* will be awarded for the best speech of the evening. A most interesting and lively debate is promised.

Tuesday, 28: Theatre Party. Brian Burrett has chosen a play which you are sure to enjoy and is reserving seats in the "Gods." Further details can be obtained from Mr. Burrett at his office. Holborn 0874.

February

Tuesday, 4: Any Questions and Discussion. At the Law Society's Hall, starting at 6.30 *p.m.* with Natter and Noggin from 6 *p.m.* The panel will give its views on any questions put to it, followed by a general discussion.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

I was interested in your paragraph headed "A Question of Evidence" contained in your Notes of the Week in the issue of the J.P. for November 9. It recalled to my mind a case with which I had to deal some few years ago, in which the same point occurred. At that time I was dealing with many police prosecutions for the Berkshire county constabulary, and received instructions to prosecute in a case of dangerous driving where the facts, if my memory serves me correctly, were as follows:

A police patrol officer on duty in a Berkshire village observed a van being driven in a highly erratic manner along the main street. The vehicle mounted the nearside kerb, then swerved to the offside over the centre white line, causing an oncoming motor car to brake suddenly to avoid a collision. The van then continued on its way and the police officer chased it on his motorcycle and stopped the van. He found that the defendant's speech was slurred and that his breath smelt strongly of alcohol and he therefore arrested him and took him to the local police station where he was examined by the police doctor who, however, would not certify him as being unfit to be in charge of a motor vehicle by reason of having taken an excessive amount of alcohol.

The driver was therefore summoned for dangerous driving. Before the court hearing I had a discussion with the inspector in charge of the case, as to whether I would in opening the facts, mention that the driver had been suspected of being drunk in charge, and I decided to do so on the grounds that although there was no charge of driving under the influence, the defendant had undoubtedly taken alcohol and that this was obviously the cause of the dangerous driving.

The accused was represented by a solicitor and no sooner had I mentioned in my opening about the conclusions which the police officer had reached, than he stood up in great indignation and objected very strongly to what I was saying. In this he was supported by the clerk of the court and I was publicly condemned by the chairman of the bench, who said that he and his colleagues had a good mind to dismiss the case straight away. I argued that in view of the manner in which the van had been driven a charge of dangerous driving could be supported by the fact that the accused had taken drink not necessarily sufficient to warrant him being certified as incapable of having proper control of a motor vehicle, but sufficient to affect his judgment and accordingly his driving.

Of course, the court had the last word, because after hearing the evidence and the submission of the defendant's solicitor, they reduced the charge to one of careless driving only and imposed quite a nominal fine and refused to allow any advocate's fee for the prosecution.

Since that particular case I have never had the temerity to breathe a word to a magistrates' court about any drink, unless there is a charge of driving under the influence, but I am not at all sure that I agree with the opinion as expressed in your Notes of the Week. I cannot see why a prosecution should not be entitled to bring forward evidence that a driver had taken drink, even if there is no charge of being drunk in charge, where clearly the driver's subsequent behaviour and driving was undoubtedly caused by the drink which he had consumed.

Yours faithfully,
ERNEST W. BRAIN.

Brain and Brain, Solicitors,
156 Friar Street,
Reading.

[We thank our learned correspondent.

[To summarize our argument we would say that if the defendant is not charged under s. 15 the prosecution must be assumed to consider that he was not unfit, through drink, to have proper control of a car, and on a charge under s. 11 or 12 all that is relevant is the way in which the car was actually driven, having regard to what was or might be expected to be on the road. To give evidence that the defendant had had some drink tends to prejudice the case against him without adding anything to the evidence as to how in fact he drove the car, and we think, therefore, that such evidence of his having had drink is irrelevant and inadmissible.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

I observe that in your answer to P.P. 6 121 J.P.N. 732 you state that there is an advisory committee which makes recommendations to the Lord Chancellor when persons are to be appointed justices of the peace for a county and you suggest that the Lord Lieutenant should be approached for further information about the working of the committee for the area in which your correspondent lives. May I say that I am not at all sure that most Lord Lieutenants would appreciate inquiries of this sort and that the better procedure would be for your correspondent to approach the secretary of the advisory committee for that area? All advisory committees work along lines recommended by the Royal Commission on Justices of the Peace, whose Report (Cmd. 7463) was published in 1948, and one of that body's recommendations was that each committee should have a secretary who should preferably be the clerk of the peace, that the secretary should be publicly known as secretary, and that it should be publicly advertised that persons and organizations can put forward to the secretary names for consideration for appointment as justices. Bearing this in mind, an approach for information to the secretary of the advisory committee for the county in which your correspondent resides would appear to be the most satisfactory course to adopt.

Yours faithfully,
G. C. LIGHTFOOT,
Clerk of the Peace of East Suffolk.
Secretary, Suffolk County Justices
Advisory Committee.

County Hall,
Ipswich.

[We agree, and are obliged to our correspondent.—*Ed., J.P. and L.G.R.*]

TOO MUCH OF A GOOD THING

Among the happenings that excite the obtrusive activity of newspaper reporters, and cause sub-editors to break into an ebullition of headlines, are the occurrences of multiple births. To the ordinary layman, who expects to be permitted a reasonable privacy in relation to his personal affairs, and is prepared to grant the same privilege to other people, it might seem an impertinence to intrude upon the intimate details of parturition (save perhaps in the case of his own wife or daughter), and a matter of complete indifference whether the woman up the street, or in the next village, who has fulfilled the usual period of gestation, ultimately performs her natural function by giving birth, contemporaneously, to three children or three-and-thirty. But there it is: certain circles in the profession of journalism have sedulously fostered the cult of the quidnunc, and convinced at any rate a section of the public that it is cold and inhuman to mind its own business. Hence it comes about that every multiple birth (except that of a twin, which is regarded as one of the ordinary hazards of any *accouchement*) is apt, for Fleet Street, to make a Roman holiday; to send the reporters scurrying back and forth, between the office and the maternity ward, in transports of delight which are by no means invariably echoed by the breadwinner of the family in this Malthusian age. The alleged observations of the "proud" father (which, if the truth were known, would hardly bear printing); the remarks of the gratified grandparents; hourly bulletins of the mother's condition; the respective weights of the newly-born progeny: the names, ages and sex of the elder children, and the genetic tendencies of other members of the family, are assiduously collected and diligently set down, under double-column headlines, with such flourishes as inventive ingenuity may devise or the supposed interests of circulation demand. Press-cameras are mobilized in scores; the vocabulary of the profession is ransacked for suitable *clichés;* the supererogation of reporting achieves fruition; the insatiable curiosity of readers is fully gorged—in short, everyone is happy, except the bewildered progenitors, who are left, counting and recounting their blessings, to wonder how on earth they are going to budget for the filling of three or more additional hungry mouths.

Statistics show that the chances of producing twins are rather more than one in 100 live births; for triplets the figure is said to be about one in 8,000. In most European countries the risk is accepted philosophically enough. Hereditary factors have been observed by some authorities, discounted by others. Actuarial accuracy, it seems, cannot be achieved in attempting to forecast the probability of the happy event; nevertheless there are families in which, one would imagine, to be forewarned is to be forearmed. Last year, in Portuguese East Africa, a woman of the Chopi tribe, who had previously given birth, successively, to a twin, a triplet and a quadruplet, duly presented her husband with a quintuplet. This exercise in arithmetical progression was carried through without regard to the deterrent effect of a local custom which (until the early 1900s) demanded the killing off of all the children of multiple births. As the mother in question was only 27 years of age at the time of this latest feat, she still has plenty of time to establish a real world-record.

In 1849 Queen Victoria chose the occasion of a visit to Ireland to establish the practice of making a pecuniary grant to the parents in cases of multiple births. Known as the Queen's Bounty, it was designed "to enable the parents to meet the sudden expense thrown upon them"; until the condition was abolished in 1938 "necessitous circumstances" had to be proved. But all the infants must be born alive, and in wedlock; both parents must be British subjects by birth or naturalization, and notification to the Sovereign must be made within 12 months. The grant was on a progressive basis—£3 for a triplet, £4 for a quadruplet, and so forth.

It has recently been announced that "in view of changes which have occurred since the Queen's Bounty was introduced, the payment shall be discontinued" though not the congratulatory message from the Sovereign. The changes referred to are the fall in the value of money and the improvement of social conditions in the welfare state.

Our first reaction on reading the announcement was, we admit, one of lively expectation—that the abolition of the payment might mean something off the income-tax. This sanguine hope was (alas!) disappointed by the discovery that the Bounty was paid out of the Privy Purse, and not from any other moneys of the Civil List or the Consolidated Fund. The entire question is hedged about with the thorny issue—is it possible to have too much of a good thing? Everybody must frame his own answer; most people would say "yes." William Blake, the bicentenary of whose birth we have recently been celebrating, has the final word on this as on so many other subjects:

"The road of excess leads to the palace of wisdom."

A.L.P.

NOW TURN TO PAGE 1

A magistrates' court may only imprison an infant when there is no other appropriate method of dealing with him, and the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and cause that reason to be specified in the warrant of commitment and to be entered in the register. (Magistrates' Courts Act, 1952, s. 107 (3).)

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Monday, December 16

RECREATIONAL CHARITIES BILL—read 1a.
PUBLIC RECORDS BILL—read 2a.

Wednesday, December 18

EXPIRING LAWS CONTINUANCE BILL—read 3a.
PUBLIC WORKS LOANS BILL—read 3a.
ENTERTAINMENTS DUTY BILL—read 3a.

Thursday, December 19

HOUSING (FINANCIAL PROVISIONS) BILL—read 1a.

BOOKS AND PAPERS RECEIVED

Gardiner and Lansdown's South /.frican Criminal Law and Procedure. Sixth Edition, vol. I (vol. II to be published shortly). Juta & Co., Ltd., Cape Town and Johannesburg. Price of both volumes £12 12*s*.

Solicitors' Diary, 1958. 114th year of publication. London: Waterlow & Sons Ltd.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law — *Larceny — "Innocent" and "Wrongful" taking.*

Having regard to the observations of the Lord Chief Justice in the recent cases of *Moynes.* v. *Coopper* [1956] 1 All E.R. 450; 120 J.P. 147; and *Russell* v. *Smith* [1957] 2 All E.R. 796; 121 J.P. 538; I would appreciate your opinion on whether the following circumstances amount to larceny.

A man leaving a dance receives from the cloak room attendant a coat, which he takes to be his own, but which some time later he discovers is not his, but is similar. It is then too late to return the coat so he resolves to return it the following day. The following day he decides that he will keep it, and he converts it to his own use.

An examination of the cases referred to in the above judgments seems to lead to the conclusion that if the original taking is innocent, then a subsequent conversion of the property does not constitute larceny. If, however, the original taking is wrongful (*i.e.*, a trespass) then a subsequent conversion can amount to larceny. If that is the position, then when is a taking "innocent" and when is it "wrongful"?

Part of the definition of larceny in s. 1 (2) (i) (*c*) includes as "taking"—"obtaining the possession under a mistake on the part of the owner *with knowledge on the part of the taker* that possession has been so obtained."

If the taking is by a mistake, but *without* knowledge of the part of the taker, is that wrongful?

If, after the taking, when subsequently the taker acquires knowledge of the mistake, and he then forms the intention to return the property to the owner, is that wrongful?

Finally, if having formed the intention to return the property to the owner, he subsequently converts it to his own use, it is certainly wrongful, but is it larceny?

G. ANDOR.

Answer.

In the course of the argument in *R.* v. *Riley* (1843) Dears 149; 169 E.R. 674, Pollock, C.B., said: "The difficulty in this case is, when can it be said that there was a taking?" The same question has bedevilled the law of larceny ever since, and it was most recently in point in *Russell* v. *Smith, supra.* The headnote to that case in the *Justice of the Peace Reports* reads: "Held . . . that the defendant came to know of the presence of the excess sacks at the time of delivery, and, accordingly, the "taking" of those sacks occurred at that time; and that, as at that time the defendant had *animus furandi,* he was guilty of larceny"

It would appear to follow that the "taking" and the intention of appropriating must be simultaneous. Applying this to the example cited, the "taking" must be said to have taken place when the man discovered that the coat was not his, but, if he is believed, he had at that time no *animus furandi* and therefore cannot be convicted of larceny, although his conduct, like that in *Moynes* v. *Coopper, supra,* is palpably dishonest. In each of our correspondent's three hypotheses we would say that the "taking" is innocent and there is no larceny, *cf.* the judgment of Goddard, L.C.J., in *Russell* v. *Smith, supra,* at p. 539 of the *Justice of the Peace Report*: "We do not, of course, throw any doubt on the proposition that if a person takes property innocently and without any felonious intention and subsequently appropriates it to his own use, that is not, according to the present state of the law, larceny. The taking must be *animo furandi.*"

We may add that our correspondent has, unconsciously perhaps, illustrated one of the difficulties in this subject, namely, the varied use of the word "take" when he uses the expression "which he takes to be his own."

2.—Local Government Act, 1948, s. 132—*Contribution to expense of entertainment provided in past.*

If a person in a ward or an urban district has already organized carnival, gymkhana, and other entertainment for the benefit of the old age pensioners in that ward, and in so doing has incurred a loss, is the urban district council empowered under the Local Government Act, 1948, s. 132 or any other power to make up such deficiency, and to give more than the deficiency, so as to provide a contribution to the old age pensioners of that ward, to the exclusion of pensioners in the other wards, at Christmas?

The entertainments referred to were not organized by or on behalf of the council, nor did they give consent to the holding of such entertainments.

If the council have power to grant money to make up the loss incurred on the entertainments, what provision should be made for inspecting the balance sheets to see that there has been no waste in connexion with the entertainments?

DEWON.

Answer.

Looking to the wide language of s. 132 of the Local Government Act, 1948, we do not think it would be a fatal objection to contributing thereunder that the persons entertained are a section of the community in one part of the area. (We are not sure whether this was so here, or whether the persons entertained were the world at large, although the money they paid for being entertained went to the old age pensioners of one ward. We do not think this matters.)

But the language must be studied as a whole. The local authority may not merely contribute towards the expenses of the provision of an entertainment, *inter alia.* The section says they may "contribute towards the expenses of the doing of anything necessary or expedient for any of the following purposes that is to say the provision of an entertainment," etc. . . .

This may be pure verbosity but, upon the primary rule of construction of giving effect to every phrase if possible, the better opinion seems to us to be that the provision of the entertainment must be in the future at the time when the local authority contribute or agree to contribute. It cannot be "necessary or expedient *for the purpose of the provision* of an entertainment" to contribute to what has already been provided. On any view of the section, they cannot give more than the sum necessary to make up the deficiency, because their doing so would be contributing to some ulterior purpose, not "the provision" of the entertainment.

On the interpretation of the section which we prefer, the question in your last paragraph does not arise. If the local authority agreed to contribute to the cost of providing a future entertainment, they would be able to stipulate for inspection and some measure of control: a practical reason for thinking this is what Parliament intended, reinforcing our opinion formed on the language itself.

3.—Magistrates—*Co-opted member of a local authority committee—Sitting as a justice in proceedings instituted by that committee.*

Section 3 of the Justices of the Peace Act, 1949, provides that a justice of the peace who is a member of a local authority within the meaning of the Local Government Act, 1933, shall not act as a member of a magistrates' court in proceedings brought by or against or by way of appeal from a decision of the authority or any committee or officer of the authority.

I shall be glad of your opinion as to whether this section operates to disqualify a co-opted member of a local authority committee when proceedings are brought by an officer of a local authority on the instructions of that committee acting on behalf of the authority. It seems to me that the words "within the meaning of" are to be read with the words "local authority" and not with the words "a member of a local authority." If this view is correct then a mere co-opted member of a committee of a local authority is not disqualified by this section even though the proceedings are in fact brought by virtue of a resolution of that committee. However, s. 95 of the Local Government Act, 1933, operates to include members of a committee within s. 76 of the Act as far as the interest in contracts are concerned and might it be inferred from this that if a wider meaning is given to the wording of s. 3, then it could operate to disqualify a member of a local authority committee? However, quite apart from the provisions of s. 3 of the Justices of the Peace Act, 1949, I shall be glad to have your opinion as to whether you consider it desirable for a co-opted member of a local authority committee to sit where proceedings are brought by or on behalf of that particular committee. Would it make any difference to your opinion if the co-opted member took no part in the deliberations of the committee on the matter in question?

KESLEY.

Answer.

We do not think that s. 3 (*supra*) applies because the co-opted member of a committee is not a member of the local authority, but we have no doubt that it is undesirable for such a co-opted member to sit as a justice in proceedings brought by or against that committee, whether he or she took any part in the committee's deliberations on the matter or not. Where there is any substantial ground for a suggestion that a justice might be biassed, as in this case, it is much better for that justice not to sit however sure he or she may be that no question of bias would arise.

4.—Road Traffic Acts—*Dangerous driving—Committal for trial—Acquittal—Objection by defence to committing justices hearing charge of careless driving.*

A short time ago a man was charged with dangerous driving, and an information was at the same time laid, charging him with careless driving. At the hearing the defendant, through his solicitors, elected to be tried by a jury on the charge of dangerous driving, and the bench took depositions and in due course committed him to quarter sessions. At quarter sessions the charge of dangerous driving was dismissed.

The police now wish to carry on with the charge of careless driving, and the solicitors for the defendant have intimated that they object to any magistrate who sat at the hearing when the depositions were taken, and committal was made, sitting to hear the charge of careless driving, to which, I understand, there will be a plea of not guilty. To save any possibility of criticism, I have arranged for the magistrates in an adjoining division to hear the charge of careless driving. All the magistrates bar one sat when the committal was made.

I shall be glad if you will let me know whether the defendant's solicitors are correct in their contention, and let me have your authority for this.

LESTOW.

Answer.

We think that there is no legal ground for the objection, *i.e.*, that the justices are not barred from sitting, but we can appreciate that the defendant may feel that justices who committed him for trial on the graver charge will be biassed in favour of convicting him on the lesser charge, and we think that it is much better, in such circumstances, for the s. 12 charge to be heard by justices who were not concerned in the committal proceedings.

5.—Road Traffic Acts—*Driving whilst "drunk"—Committal for trial without defendant asking for trial by jury.*

A case has recently been dealt with in my division against a person for "driving a motor vehicle whilst under the influence of drink, etc.," and "taking and driving away a motor vehicle without the consent of the owner," contrary to ss. 15 and 28 of the Road Traffic Act, 1930.

When the accused appeared before the court, the prosecutor was in possession of his character and antecedents, and, in view of his bad record, the prosecutor at the commencement and before the accused was charged, asked for both cases to be committed to the quarter sessions for trial on indictment. The justices agreed, depositions were taken, and the accused was committed for trial.

I was later informed by a clerk in the office of the clerk of the peace for the county that the committal on the "drunk" charge was a bad committal, but the "taking and driving away" was good. The reason given was that a charge under s. 15 was a summary offence which can be tried on indictment, but *only if the accused elects for trial*, and the prosecutor has no right to ask for trial on indictment.

According to s. 18 (1) of the Magistrates' Courts Act, 1952 (offences triable on indictment or summarily) and footnote (i) on p. 52 of *Stone*, 89th edn., 1957, it would appear the committal was good in law.

I would be very much obliged if you would kindly let me have your valued opinion on this point.

ISSET.

Answer.

The offence under s. 15 is one to which s. 18 of the Magistrates' Courts Act, 1952, applies. The procedure followed at the magistrates' court was a proper one and the committal is valid.

6.—Standing Orders—*Effect of failure to comply.*

Will you kindly advise what is the effect of the deliberate disregard by a local authority of the provisions of its standing orders as to procedure (not those relating to contracts) where no resolution to suspend them is passed? For example, are any decisions made contrary to the standing orders *ultra vires*?

BEMBO.

Answer.

There is no direct judicial authority upon this question generally, nor does the Local Government Act, 1933, which authorizes the making of standing orders, say what shall be the effect of failure to comply with them. It may be thought that, if standing orders can be departed from without invalidating the business done, then they are useless. On the other hand, Parliament may have considered that responsible bodies will not normally depart from their own standing orders, and therefore that the advantage of having standing orders is not nullified by the possibility of an occasional breach. In theoretical jurisprudence, standing orders may be considered *leges imperfectae* analogous to rules of international law, which are normally obeyed though not supported by sanctions.

The question put to us excludes the standing orders relating to contracts, and in practice we think that question can only be answered upon the facts of a particular case. This is because the High Court, if called upon to answer the question, would be likely to consider the substance of what had been done by the local authority, rather than the form. Standing orders are of more than one type. For example, model standing orders 4 and 5 deal with notices of motion. If a meeting accepted a motion of which notice had not been given, although it should have been, the High Court would (we think) be reluctant to say that the decision on the motion was ineffective, unless (perhaps) some person were shown to be adversely affected. On the other hand, if a majority of a district council decided to make some payment, although the notice required by the standing order had not been given to all members, the Court might well hold the payment to be illegal.

Obviously a local authority ought not to depart from its standing orders without going through the proper procedure for doing so under model standing order 46, but we should hesitate to advise recourse to the High Court, for the purpose of quashing a local authority's decision, on the ground that standing orders had not been complied with, unless there were some ground of merit in the particular case.